STATE OF MICHIGAN

COURT OF APPEALS

RICHARD V. STOKAN,

Plaintiff-Appellee/Cross-Appellant,

v

HURON COUNTY,

Defendant-Appellant/Cross-Appellee.

UNPUBLISHED
July 8, 2004

No. 242645
Huron Circuit Court
LC No. 99-000732-CK

RICHARD V. STOKAN,

Plaintiff-Appellee,

v

HURON COUNTY,

Defendant-Appellant.

No. 243489
Huron Circuit Court
LC No. 99-000732-CK

Before: Cavanagh, P.J., and Gage and Zahra, JJ.

PER CURIAM.

In Docket No. 242645, defendant appeals two orders granting plaintiff's motions for partial summary disposition, an order of judgment in plaintiff's favor, and an order denying defendant's motion to set aside the judgment, following the grant of its application for delayed leave. Plaintiff cross appeals as of right the denial of his motion in limine. We affirm. In Docket No. 243489, which has been consolidated here, defendant appeals as of right a denial of its motion for case evaluation sanctions. We affirm.

Plaintiff had allegedly been an employee and/or elected official of defendant's sheriff department for over 20 years and left that employment in 1988 when he was 48 years old. In 1995, when plaintiff reached the age of 55, he applied to defendant for health care benefits pursuant to Resolution 23-83, which had been adopted in 1983 by defendant's Board of Commissioners when plaintiff was the Huron County Sheriff. Defendant denied plaintiff's request, claiming that he was ineligible for failure to meet the age requirement at the time of retirement.

Plaintiff filed this declaratory judgment, breach of contract, and promissory estoppel action. Subsequently, plaintiff filed a motion for summary disposition on the ground that there was no genuine issue of material fact that, by the plain language of the Resolution, plaintiff was entitled to certain health care benefits. The trial court agreed and entered an order granting plaintiff's motion on the issue of liability, holding that plaintiff was entitled to county paid health insurance benefits commencing in 1995, and ordered trial on the issue of damages and the level of benefits to be received by plaintiff.

Because defendant still refused to pay health care premiums on plaintiff's behalf, plaintiff filed a motion to amend his complaint to request a writ of mandamus or specific performance, and the motion was granted. Defendant filed an application for interlocutory appeal with this Court and moved for a stay in proceedings in the trial court. This Court denied leave and defendant's motion for stay was denied. Thereafter, plaintiff moved for partial summary disposition on the issue of plaintiff's entitlement to a writ of mandamus or specific performance in light of defendant's failure to provide health insurance benefits to plaintiff, and his spouse, consistent with the court's previous order. The trial court granted plaintiff's motion for partial summary disposition and ordered defendant to enroll plaintiff and his wife in the county health plan and to pay 75% of the premium, contingent on plaintiff paying 25% of the premium, until trial where it would be determined whether plaintiff was entitled to payment of 75% or 100% of the premium.

A jury trial commenced and a verdict in the amount of $14,000 was rendered in plaintiff's favor. The jury also determined that plaintiff had less than 20 years of service in defendant's employment for purposes of Resolution 23-83 and judgment was entered accordingly. Defendant's motion to set aside the judgment for failure to properly notify defendant of its entry was denied. Defendant then filed a motion for mediation sanctions because the case mediated for $40,000, which defendant accepted but plaintiff rejected, and plaintiff allegedly only received a verdict of $14,000. Plaintiff responded that the payment of health insurance premiums over plaintiff's life expectancy amounts to far more than $40,000 and, thus, he did receive a more favorable verdict. The trial court agreed with plaintiff and denied sanctions.

On appeal, defendant first claims that plaintiff was not entitled to summary disposition on the issue of liability because plaintiff did not meet the eligibility requirements of Resolution 23-83. We disagree. This Court reviews decisions on motions for summary disposition de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998).

Resolution 23-83 provides, in pertinent part:

> WHEREAS, it is desirious [sic] to provide additional vision and dental health care for current county employees, except those whose benefits are determined by or based upon the F.O.P. contract; and further to provide health care benefits to current county employees upon retirement from county service after this date.
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> NOW, THEREFORE BE IT RESOLVED, that in lieu of salary increases for the year 1984, all current county employees, including elected officials, but excluding those employees whose benefits are determined by or based upon the

F.O.P. contract, shall henceforth be provided the additional health care benefit of the Blue Cross and Blue Shield of Michigan Vision Care and Comprehensive Preferred Dental Plan, 80-20 Co-Pay, $1,000 limit per member per benefit year.

BE IT FURTHER RESOLVED, that the premium for the county employee health care benefit plan, as it may be constituted from time to time, shall be paid by the County for current employees, including elected officials, but excluding those employees whose benefits are determined by or based upon the F.O.P. contract, upon retirement from county service after the date of this resolution as follows, if an election is made by them to remain under such plan:

1. The County of Huron shall pay 50% of such premium for such retired employee having at least 10 years of service with the County and being of the age of 55 or older.

2. The County of Huron shall pay 75% of such premium for such retired employee having at least 15 years of service with the County and being of the age of 55 or older.

3. The County of Huron shall pay 100% of such premium for such retired employee having at least 20 years of service with the County and being of the age of 55 or older or for such employee having at least 10 years of service with the County and being of the age of 60 or older.

BE IT FURTHER RESOLVED, that the Huron County Board of Commissioners hereby reserves the right to at anytime hereafter and without notice amend, alter, or revoke the benefits herein provided.

BE IT FURTHER RESOLVED, that this Resolution shall be effective upon adoption for current county employees above mentioned and those current county employees who retire following the adoption hereof.

The trial court ruled that the resolution was unambiguous—the benefit accrued to "current employees, including elected officials" when the period of employment was met, even though it may not be available until that person reached the required age. We agree with the trial court. Whether contractual language is ambiguous is a question of law that is also reviewed de novo on appeal. *Farm Bureau Mut Ins Co v Nikkel*, 460 Mich 558, 563; 596 NW2d 915 (1999).

"The primary goal in the construction or interpretation of any contract is to honor the intent of the parties." *Rasheed v Chrysler Corp*, 445 Mich 109, 127 n 28; 517 NW2d 19 (1994). "Contractual language is construed according to its plain and ordinary meaning, and technical or constrained constructions are to be avoided." *Dillon v DeNooyer Chevrolet Geo*, 217 Mich App 163, 166; 550 NW2d 846 (1996). "A contract is ambiguous if the language is susceptible to two or more reasonable interpretations." *D'Avanzo v Wise & Marsac, PC*, 223 Mich App 314, 319; 565 NW2d 915 (1997). "[I]f a contract, even an inartfully worded or clumsily arranged contract, fairly admits of but one interpretation, it may not be said to be ambiguous or fatally unclear." *Michigan Twp Participating Plan v Pavolich*, 232 Mich App 378, 382; 591 NW2d 325 (1998).

The fact that the parties dispute the interpretation of the contract does not, by itself, create an ambiguity. *Cole v Ladbroke Racing Michigan, Inc*, 241 Mich App 1, 14; 614 NW2d 169 (2000).

Here, Resolution 23-83 plainly states that its objective was to provide health care benefits to then-current county employees and elected officials. Vision and dental plans were to be provided "henceforth" and were, in effect, financed by those recipients since they received those plans instead of a salary increase for the year 1984. Health care benefit plans were to be provided to then-current county employees and elected officials upon retirement, if so elected, with the recipient's payment contribution dependent on the number of years of county service and age. The critical language of the disputed provision is as follows:

> [T]he premium for the county employee health care benefit plan . . . shall be paid by the County for current employees, including elected officials . . . upon retirement from county service after the date of this resolution as follows . . . if an election is made by them to remain under such plan:
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> 2. The County of Huron shall pay 75% of such premium for such retired employee having at least 15 years of service with the County and being of the age of 55 or older.

Defendant argues that plaintiff is not entitled to any county-sponsored health care benefit plan because he retired at the age of 48, not 55 or older. But, that is not what the Resolution requires; it plainly states that those persons who were employees on the date the Resolution was adopted would be entitled to health care benefits when they retired from the county but their level of benefit was dependent on two variables—their number of years of service and their age. The Resolution does not indicate that "current employees, including elected officials" had to be 55 or over at the time of retirement in order to be eligible for benefits and that if one retired at age 48, like plaintiff, he completely forfeited his right to these benefits. Defendant's reliance on *Douglas v Saline*, unpublished opinion per curiam of the Court of Appeals (issued November 26, 1996, Docket No. 185668) is misplaced since, there, the age requirement for continued health care benefits is explicit ("and have reached the age of fifty-five (55) years as of the date of such retirement").

Further, we disagree with the dissenting opinion's conclusion that the phrase "if an election is made by them to remain under such plan" constitutes a condition precedent that plaintiff failed to fulfill. Plaintiff did elect to "remain under" the county-sponsored health care plan, as opposed to procuring other health care insurance, when he attained the age of fifty-five as required by the Resolution. Whether viewed as a contractual right or a legislatively-derived right, this Court's responsibility is to determine the intent behind the adoption of the provision. See *Gladych v New Family Homes, Inc*, 468 Mich 594, 597; 664 NW2d 705 (2003); *Gross v General Motors Corp*, 448 Mich 147, 158-159; 528 NW2d 707 (1995). To determine that intent, we consider the language of the provision in light of the purpose of, or surrounding circumstances pertaining to, the provision. See *id.*; *Rose Hill Ctr, Inc v Holly Twp*, 224 Mich App 28, 32; 568 NW2d 332 (1997).

Here, the intent behind the contested provision of Resolution 23-83 was plainly expressed to provide health care benefits to then-current county employees and elected officials after they retired if they were desired, and if they were entitled by years of service and age. If the intended beneficiaries of that provision were to include only those then-current county employees who reached the age of fifty-five or older and had at least ten years of service, both, *at the time of* retirement then those conditions should have been plainly expressed. See *MacDonald v Perry*, 342 Mich 578, 586; 70 NW2d 721 (1955). We are not inclined to impose such conditions, which would have the effect of penalizing those employees who qualified for the benefit by their years of service but retired before the age of fifty-five, in light of the language, and clear intent, of the Resolution. The language does not compel that result. See *Reed v Citizens Ins Co of America*, 198 Mich App 443, 447; 499 NW2d 22 (1993). Accordingly, the trial court properly granted summary disposition in plaintiff's favor with regard to this issue and did not abuse its discretion in denying defendant's motion for reconsideration. See *In re Beglinger Trust*, 221 Mich App 273, 279; 561 NW2d 130 (1997).

Defendant's remaining issues on appeal are meritless. First, defendant argues that the trail court erred when it denied its motion to set aside the judgment on the ground that defendant did not receive it from plaintiff. However, defendant has merely announced its position without properly addressing its merits; accordingly, it is abandoned. See *Yee v Shiawassee Co Bd of Comm'rs*, 251 Mich App 379, 406; 651 NW2d 756 (2002). Next, defendant argues that the trial court erred in denying it case evaluation sanctions under MCR 2.403(O) but the "verdict," i.e., "the amount that the prevailing party should be awarded," was more than 10 percent above the case evaluation award since plaintiff also recovered the payment of future premiums. See MCR 2.403(O)(2); *Marketos v American Employers Ins Co*, 465 Mich 407, 414; 633 NW2d 371 (2001). Therefore, this issue is without merit.

On cross appeal, plaintiff argues that the trial court erred in denying his motion in limine and ruling that the proper measure of damages was the costs incurred by plaintiff as a consequence of defendant's failure to provide health care coverage. We disagree. "The remedy for breach of contract is to place the nonbreaching party in as good a position as if the contract had been fully performed. Accordingly, the goal in contract law is not to punish the breaching party, but to make the nonbreaching party whole." *Corl v Huron Castings, Inc*, 450 Mich 620, 625-626; 544 NW2d 278 (1996). The trial court's ruling permitted the proper remedy to be provided and accomplished this goal.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Hilda R. Gage